

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/037,593	<b>Applicant(s)</b> KULIG ET AL.	
	<b>Examiner</b> BARBARA N. BURGESS	<b>Art Unit</b> 2457	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: NONE.  
 Claim(s) objected to: NONE.  
 Claim(s) rejected: 1-3, 5, 7-19, 21-27 and 54-59.  
 Claim(s) withdrawn from consideration: 4, 6, 20, 28-53 (previously cancelled).

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see response below.  
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 12-22-08  
 13. ☐ Other: \_\_\_\_\_.

/ARIO ETIENNE/  
 Supervisory Patent Examiner, Art Unit 2457

## ADVISORY ACTION

The Office notes the following argument(s):

- (a) The Examiner failed to state which of the two specifications she intended in the underlined phrase "the specification".
- (b) Meeting the written description requirement is a necessary but far from sufficient condition for Lachman 2 (US Patent Application 2002/0166063 A1) to be used as prior art against instant application.
- (c) Lachman 1 (US Provisional Application 60/272,712) must meet all of the requirements of 35 U.S.C 112, first paragraph with respect to the subject matter relied upon in making the rejection.
- (d) Lachman 1 must disclose the invention claimed in Lachman 2 in the manner provided by the first paragraph of section 112.
- (e) The Examiner failed to even assert that the invention claimed in Lachman 2 is disclosed in Lachman 1 in the manner provided by first paragraph of 112.

1. Applicant's arguments filed have been fully considered but they are not persuasive.

In response to:

- (a) The Examiner stated the following:

The provisional application, Lachman I (60/272,712), for which Lachman III (US Patent Application Publication 2002/0166063 A1) claims benefit, discloses subject matter which is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application (US Patent Publication 2002/0166063 A1) was filed, had possession of the claimed invention. Therefore, Lachman III can be used as prior art against the instant application.

Therefore, the effective date of the patent is the provisional date of March 1, 2001.

"The specification" in the above statement refers back to the provisional application, Lachman I (60/272,712).

- (b)-(e) Lachman 2 teaches triggering an "Alert" message (DED message), as well as providing attack reports and displaying "Warning" messages (RTP message) (paragraphs [0101, 0128, 0153]).

Lachman 1 teaches this feature of an "Alert" message, as well as providing attack reports and displaying "Warning" messages (Specification, page 9, lines 10-11, page 10, lines 3-7).

Therefore, both Lachman 1 and Lachman 2 discloses inspecting data packets and issuing of a DED message and RTP message.

Lachman 2 further teaches an offensive countermeasure server/router (RTP) which can provide a pathway for initiating an offensive countermeasure against attacker. This server/router is connected to the A.N.T. system (DED) (paragraphs [0070-0071]).

Lachman 1 teaches this feature of a countermeasure router used to initiate a countermeasure against attacker. The router is connected to the A.N.T. system (DED) (Specification, page 7, lines 6-8, 15-16, 18-20, page 11, lines 11-13).

Therefore, both Lachman 1 and Lachman 2 indeed discloses Applicant's DED and RTP.

Lachman 2 teaches an A.N.T. system that analyzes packets to determine if they match a signature of an attack type, or if they contain similar or matching data. The packet sniffing module of the system compares information within packets to detect packets comprising similar or matching information (paragraphs [0073, 0081, 0098, 0100]).

Lachman 1 teaches this feature of an A.N.T. system that analyzes packets and determines matching data. The packet sniffing module compares information within packets to detect similar or matching information (Specification, page 4, lines 19-23, page 5, lines 1-5, 10-13, page 9, lines 10-19, page 11, lines 10-14, 20-23).

Therefore, both Lachman 2 and Lachman 1 undoubtedly discloses a DED operable to search data packets for content match information.

Lachman 2 teaches the host router can deny or allow certain traffic to the host network. Packets that may part of an attack can be rejected from transmission (paragraphs [0111, 0120]).

Lachman 1 teaches the feature of the host router denying or allowing certain traffic (Specification, page 7, lines 6-8, page 11, lines 3-5).

Therefore, both Lachman 2 and Lachman 1 discloses preventing further transmission of packets.

- (d)-(e) As shown above, Lachman 1 teaches the features of Lachman 2 as used in the rejection of the instant application. Lachman 2 is disclosed in Lachman 1 in the manner provided by first paragraph of 112.

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA N. BURGESS whose telephone number is (571)272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Barbara N Burgess/  
Examiner, Art Unit 2457 Barbara N Burgess  
Examiner  
Art Unit 2457

January 22, 2009

